



CC-2002-030
II-A-020
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 9 1997

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

John P. Picone, President
John P. Picone, Inc.
31 Garden Lane
Lawrence, NY 11559

RE: NOTICE OF VIOLATION: File No. AED/MSEB - 4712

Dear Mr. Picone:

On April 9, 1996, authorized representatives of the United States Environmental Protection Agency (EPA) inspected a motor vehicle owned and operated by John P. Picone, Inc., located in Lawrence, New York. The inspection was conducted to determine compliance with § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations issued thereunder (40 C.F.R. Part 80). Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

Section 211(g)(2) of the Act prohibits any person from introducing, or causing or allowing the introduction into any motor vehicle diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05% after October 1, 1993. This law subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

As a result of our inspection, EPA has determined that diesel fuel having a sulfur content in excess of the sulfur standard was introduced into the fuel tank of a 1991 International truck owned by John P. Picone, Inc., in violation of section 211(g)(2) of the Act. Therefore, John P. Picone, Inc. is liable for a misfueling violation.

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of such violation and the economic benefit or savings resulting from the violation. Section 205(c) further authorizes the Administrator to compromise or remit, with or without conditions, any such penalty. After consideration of the magnitude and gravity of the violation and your history of compliance with the Clean Air Act and the Fuels Regulations, we propose a civil penalty for the violation alleged in this Notice of \$3,000.

We encourage settlement of such matters. The settlement process provides substantial flexibility for reducing the statutory penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

Please contact the following EPA official, who has been assigned to this case:

David J. Gottfried, Esquire
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242A)
401 M Street, S.W.
Washington, D.C. 20460
Telephone: (202) 564-1019

Please let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement.

Sincerely yours,

Bruce C. Buckheit

Bruce C. Buckheit, Director
Air Enforcement Division